WORKPAPER TITLE: 11/21/19 OECA, (b) (6) Interview

Name	Completed Date	Comments
Prepared by: Natasha Henry	12/19/19 01/16/20	Added f/up phone call and email with (b) (6)
Reviewed by: C. Kincheloe	1/16/2020	**[x]:** I reviewed this WP and found it satisfactory. (No comments were provided.) **[ ]:** I reviewed this WP and found it satisfactory. I also included **comments in a blue colored font**. **[ ]:** All comments have been resolved.
Edited by: S. Davidson C. Kincheloe	1/30/20 4/23/20	Added link Added note that wp contains potential law enforcement sensitive information

Note: WP contains Potential Law Enforcement Sensitive Information

Link:

Purpose: To document informational interview with the (b) (6), Office of Enforcement and Compliance Assurance (OECA).

Source(s): Team notes

Meeting/Interview information:

Date & Time/Duration	Meeting Location	Invitation, Agenda, Questions (*If applicable*)
Thursday, 11/21/2019, 09:00 AM - 10:00 AM	**Conference phone number:** (b) (6) **Conference ID:** (b) (6)	**S1-** **S2-** **S3-**
Wednesday, 12/18/19 11:00 AM-11:15AM	Natasha's office phone: 212-637-3193	

Link:

Participants:

[last name, first name]

#	**Name** *Phone Line Attendance*	**Organization/Position**	**Contact Information**
	EPA		
1	(b) (6)	OECA-(b) (6) Attorney-Adviser	(b) (6)
	OIG		
2	Kincheloe, Chad	OIG-OAE-TCMPP Project Manager	312-886-6530
3	Parker, Barry	OIG-OAE-TCMPP Program Analyst	202-566-2918
4	Davidson, Sarah	OIG-OAE-TCMPP Program Analyst	202-566-2529
5	Henry, Natasha	OIG-OAE-TCMPP Health Scientist	212-637-3193

Scope: PRG **Section D Interviews**

Conclusion(s):

On November 21, 2019 the OIG had meeting with the OECA attorney, (b) (6) .

- Link: The 6 Fayetteville violations in NOV (notice of violation) is not related to Consent Order **[1]**
- HFPO is the chemical responsible for the pollution **[2]**
- The state of NC is the lead on actions against the company **[3]**
- (b) (5)
- (b) (5)
- (b) (5)

On December 18, 2019 OIG evaluator followed up with (b) (6) via phone to clarify additional points regarding the Feb 13, 2019 NOV (See WP Link: B.1 - PSSC - Notice of Violation.docx) and summarized the key points of the conversation via an email to the team **[6].**

- (b) (7)(A)
- The violations in the NOV are not related to the presence of GenX in the Cape Fear, NC river.
- However, the NOV violations are related to releases in Parkersburg, WV (and not something like a paperwork violation). There is a discharge issue.
- The violations (West Virginia) are a result of Gen X manufacturing not being in an enclosed process.
- There is a possibility that the EPA was not provided with enough information during the application process (possibly related to the PMN and CDR violations but not the 5e). The company did not disclose that Gen X was created as a byproduct.
- Gen X was created on the North Carolina site because of the releases of HFPO.

On January 13, 2020, the OIG followed up with (b) (6) to ensure a correct understanding and interpretation of information learned. (b) (6) made one edit to an OIG paragraph by requesting that the team (b) (5) to "review of" in the provided sentence. (The inspections are a review that can be used to determine compliance, but are not, by themselves a compliance determination.) **[7].**

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Details:

Discussion Area Topics:

[1]The 6 Fayetteville violations in NOV is not related to Consent Order:

(b) (6) shared that they are not related to the consent order for the Fayetteville facility. The focus is on water. (b) (5) .

[2] HFPO is the chemical responsible for the pollution

It is the basis for chemistry involving Gen X. The DuPont/Chemours company argue that this is essentially an enclosed system.

[3] The state of NC is the lead on actions against the company
The state has the delegated authority, but legally, used the state commercial licensing authority to regulate the company. The state filed lawsuits in court to reduce emissions and required Chemours to start capturing waste water streams.

Link: Index - DraftRptResultsEtc..docx[4] (b) (5) [redacted]

- According to (b) (6) [redacted], when the original 5e order was written, there was a smaller amount in pounds of production. So a release of 1% was a smaller, negligible amount. Now the company is manufacturing a larger amount of the chemical, so the 1% released becomes a bigger number. So ideally one would want an enclosed process with no releases.
- Additionally, (b) (6) [redacted] described this (b) (5) [redacted]

[5] Having a representative from OECA would make a difference

- (b) (5) [redacted]

[6] **Update 12/18/19:**

NH evaluator conclusion based on phone call with (b) (6) [redacted]:
The team decided to follow up with (b) (6) [redacted] to confirm/ clarify OIG understanding of the violations that occurred at West Virginia facility and if there were any connections to the North Carolina facility. The team is able to conclude that violations documented in the NOV (See workpaper B.1 Link: B.1 - PSSC - Notice of Violation.docx) do not refer to Gen X outcomes at the North Carolina facility.

From: Henry, Natasha
Sent: Wednesday, December 18, 2019 11:23 AM
To: Kincheloe, Chad <Kincheloe.Chad@epa.gov>; Davidson, Sarah <davidson.sarah@epa.gov>; Parker, Barry <Parker.Barry@epa.gov>
Cc: Harris, Jeffrey <Harris.Jeffrey@epa.gov>
Subject: follow up with (b) (6) [redacted]

Hi Team,

I just got off the phone with (b) (6) and he confirmed the following:

- There was (b) (7)(A) .
- The violations in the NOV are not related to the presence of GenX in the Cape Fear, NC river.
- However, the NOV violations are related to releases in Parkersburg, WV (and not something like a paperwork violation). There is a discharge issue.
- The violations are a result of Gen X manufacturing not being in an enclosed process.
- There is a possibility that the EPA was not provided with enough information during the application process (possibly related to the PMN and CDR violations but not the 5e). The company did not disclose that Gen X was created as a byproduct.
- Gen X was created on the site because of the releases of HFPO.

-Natasha

Natasha Henry
Health Scientist | US EPA - Office of Inspector General
Office of Audit & Evaluation:
Toxics, Chemical Management, and Pollution Prevention
290 Broadway | Suite 1520 | New York, NY 10007-1866
☎: (212) 637-3193 | ✉: henry.natasha@epa.gov

[7] **Update 01/16/20:**
Email correspondence to (b) (6) (in reverse chronological order).

From: (b) (6) @epa.gov>
Sent: Monday, January 13, 2020 4:37 PM
To: Henry, Natasha <Henry.Natasha@epa.gov>
Cc: (b) (6) @epa.gov>
Subject: RE: OIG Request: Please review for accuracy.

Hi Natasha,
I only had a small edit below in red to make s (b) (5) . I'm copying my Branch Chief (b) (6) so he's aware of this as well. Let me know if you have any more questions.

Thanks,
(b) (6)

(b) (6)
EPA Headquarters
(b) (6)
Attorney
(b) (6)
@epa.gov

From: Henry, Natasha <Henry.Natasha@epa.gov>
Sent: Monday, January 13, 2020 10:11 AM
To: (b) (6) @epa.gov>
Subject: OIG Request: Please review for accuracy.

H(b) (6)

Thank you for speaking with me before the holiday season to clarify our understanding of the NOV. (For reference, please see project notification regarding our OIG evaluation of the Implementation of the EPA's TSCA Premanufacture Notice Consent Order with DuPont [Chemours] https://www.epa.gov/sites/production/files/2019-09/documents/_epaoig_notificationmemo_9-23-19_dupont.pdf .)

Would you review this paragraph for accuracy? We'd like to ensure that we've correctly interpreted the information we learned.

> "On April 24, 2018, EPA Region 4 issued a report on the results of Chemours Fayetteville Works TSCA compliance inspection, which included (b) (5) review of the 5(e) Consent Order. On February 13, 2019, based on the TSCA compliance monitoring inspection, EPA OECA's Office of Civil Enforcement sent a TSCA Notice of Violation to Chemours.[1] According to OECA staff, the Notice of Violation did not include any violations of the 5(e) Consent Order at the Fayetteville Works Facility."

Thanks again,
Natasha

Natasha Henry
Health Scientist | US EPA - Office of Inspector General
Office of Audit & Evaluation:
Toxics, Chemical Management, and Pollution Prevention
290 Broadway | Suite 1520 | New York, NY 10007-1866
☎: (212) 637-3193 |✉: henry.natasha@epa.gov

- **END** -

[1] The Notice of Violation was applicable to two Chemours facilities using the GenX manufacturing process, the Fayetteville Works Facility in North Carolina (EPA Region 4), and the Washington Works Facility in West Virginia (EPA Region 3)

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WORKPAPER TITLE: Findings Meeting with OCSPP

Name	Completed Date	Comments
Prepared by: Sarah Davidson	1/27/20	
Reviewed by: C. Kincheloe	1/27/20	**[x]:** I reviewed this WP and found it satisfactory. (No comments were provided.) **[ ]:** I reviewed this WP and found it satisfactory. I also included **comments in a blue colored font**. **[ ]:** All comments have been resolved.
Edited by: C. Kincheloe	4/23/20	Added note that wp contains potential law enforcement sensitive information

Note: WP contains Potential Law Enforcement Sensitive Information

Meeting/Interview Information:

Date & Time/Duration	Meeting Location	Invitation, Agenda, Questions (*If applicable*)
1/22/2020, 1:00PM	3156 EPA East Building	Source 1 Meeting Invite Source 2 Sign in sheet

#	Description	Source Document
1	**Meeting Invite**	**Source 1 – OCSPP Meeting Invite.pdf**
2	**Sign In Sheet**	**Source 2 – OCSPP OIG Sign In Sheet.pdf**

Participants:
See source 2

Scope: Conduct findings meeting with Agency

Conclusion(s):
On January 22, 2020 the OIG briefed OCSPP on proposed findings and potential recommendations.

OCSPP expressed concerns with the bluebook process, and said they would be following up with their AA (summary A below)

OCSPP said that OCSPP does have a policy to provide regions with the 5 (e) consent orders, but the policy is not written down (see summary D below)

OCSPP requested t(b) (5) (see summary D below)

OCSPP said that (b) (5) . (see summary D below)

Summary:

A. After introductions, Jeff started the meeting by reminding OCSPP that this is a bluebook review, which is somewhat different than OIG reviews OCSPP may be familiar with. Jeff described the differences between the two. These differences included:

Bluebook reviews follow CIGIE standards, and have a few less steps needed, whereas "regular" reviews follow the GAO yellow book.

Bluebooks do not have discussion documents which are shared with the agency, instead a findings meeting where findings and potential recommendations are read to the agency.

Bluebooks only allow for a 15-day agency review of the draft report.

(b) (6), OCSPP audit liaison, said that she does not like the new bluebook process. She said the process is not something that EPA agreed to and she would be taking this up with her AA and possibly OCFO.

(b) (6) asked when the OIG expected to issue the draft report. Chad replied we estimated to issue the draft in about a month.

B. Barry reminded OECA of the objective of this review:

To determine what actions EPA took to verify compliance with requirements of the 2009 TSCA Premanufacture Notice Consent Order with DuPont [Chemours] to prevent release of the chemical GenX in the Cape Fear River basin.

C. Barry went through the draft findings below:

Until June 2017, EPA actions to verify compliance were limited to tracking and review of Chemours provided information to confirm compliance with the orders' new chemicals testing requirements.

Region 4 conducted EPA's first onsite TSCA compliance monitoring inspection at the Fayetteville Works Facility on June 28-29 2017.

Region 4 was unaware of the Consent Order and its requirements until the inspection was requested by EPA headquarters.

EPA did not identify or provide, an EPA policy or procedure for notifying regions of final 5(e) Consent Orders.

(b) (5) [redacted]

(b) (5) [redacted]

D. During Barry's discussion of the draft findings, OCSPP provided the following observations:

(b) (6) from OCSPP said that OCSPP does have a policy to provide regions with the 5 (e) consent orders, but the policy is not written down, and could possibly have a few loops that need to be tied up to verify regions get the orders. (b) (6) also said that she was sure Region 4 received the consent order when it was issued.

(b) (6) [redacted] (b) (6), (b) (5) [redacted] responded that it was up to the company to demonstrate compliance with this condition, and that the company is required by the consent order to keep records under the recordkeeping section of the order. Chad (b) (6), (b) (5) [redacted] to make sure it clear in the draft report.

(b) (6) said (b) (5) [redacted]

Natasha then said (b) (5) [redacted].

E. Jeff then read the following from our draft:

On April 24, 2018, EPA Region 4 issued a report on the results of (b) (5) Fayetteville Works TSCA compliance inspection, which included compliance with review of the 5(e) Consent Order. On February 13, 2019, (b) (5) [redacted] EPA OECA's Office of Civil Enforcement sent a TSCA Notice of Violation to Chemours. According to OECA staff, the Notice of Violation did not include any violations of the 5(e) Consent Order at the Fayetteville Works Facility. (b) (5) [redacted]

OCSPP did not have anything to add.

F. Barry then read the proposed recommendations which he said are directed to OCSPP:

1. Implement a process for Office of Enforcement and Compliance Assurance review and approval of TSCA 5(e) Consent Orders terms and conditions they will

be responsible for verifying during compliance monitoring and enforcement activities.

2. Implement a process to verify that EPA regions acknowledge receipt of final TSCA 5(e) Consent Orders for regions having facilities operating in their region subject to the terms and conditions of the consent order.

OCSPP did not have any specific suggestions on the recommendations, but (b) (6) said that she thought they were already doing these things, their response would probably reflect that, but could come up with a plan to address them.

WORKPAPER TITLE: Meeting- 10/24/19 OSCPP Interview

Name	Completed Date	Comments
Prepared by: Natasha Henry	11/07/19 11/19/19	Notes and access delayed due to computer malfunctions.
Reviewed by: C. Kincheloe Added blue highlight to end of Details 5 for indexing purposes CK 2/13/20	11/20/19	[ ]: I reviewed this WP and found it satisfactory. (No comments were provided.) [x]: I reviewed this WP and found it satisfactory. I also included **comments in a blue colored font**. [ ]: All comments have been resolved.
Edited by: SD added link and highlight 1/29/20 NH indexing- 01/30/20, 02/03, 02/04 C. Kincheloe 4/23/20		 CK added note that wp may contain law enforcement sensitive information

Note: WP contains Potential Law Enforcement Sensitive Information

Link:

Purpose: To document informational interview with the Office of Chemical Safety and Pollution Prevention (OCSPP).

Source(s): Team notes

Meeting/Interview information:

Date & Time/Duration	Meeting Location	Invitation, Agenda, Questions (*If applicable*)
10/24/2019, 08:00 AM - 09:00 AM	EPA, Washington, DC DCRoomWest-3225-25-VideoConf-OIG/DC-CCW-OIG **Conference phone number:** (b) (6) **Conference ID:** (b) (6)	**S1-** OCSPP meeting Sign In Sheet **S2-** OCSPP response **S3-** Consent Order modifications **S4-** List of submitted studies from Chemours **S5-** 2009 Review Process **S6-** OIG questions for OCSPP

Participants:
[last name, first name]
See Source 1 Link: **Sign in Sheet OCSPP meeting 10/24/19**

#	**Name** (P) *Phone Line Attendance* (V) *VTC Attendance*	**Organization/Position**	**Contact Information**
	EPA		
1	(b) (7)(A)	OPPT/CCD (b) (7)(A)	(b) (7)(A)
2	(b) (7)(A)	OPPT/CCD (b) (7)(A)	(b) (7)(A)
3	(b) (7)(A)	OPPT/CCD (b) (7)(A)	(b) (7)(A)

4	(b) (7)(A)	OPPT/IO (b) (7)(A)	(b) (7)(A)
5	(b) (7)(A)	OPPT/IO (b) (7)(A)	(b) (7)(A)
	OIG		
6	Parker, Barry	OIG-OAE-TCMPP Program Analyst	202-566-2918
7	Davidson, Sarah	OIG-OAE-TCMPP Program Analyst	202-566-2529
8	Henry, Natasha	OIG-OAE-TCMPP Health Scientist	212-637-3193
9	Kincheloe, Chad	OIG-OAE-TCMPP Project Manager	312-886-6530

Scope: PRG **Section D Interviews**

Conclusion(s):
On Thursday, October 24, 2019 at 8am ET, the OIG team met with OCSPP.

- Compliance Monitoring is done by OECA but it is OCSPP that keeps the company on track, reviews protocols [5]
- According to OCSPP, (b) (7)(A) but OECA does receive copies. [6]
- OCSPP compliance Monitoring involves testing and looking for Quality Assurance and at company protocols. [9]
- The onus is on the company to meet the 99% recapture figure and document. [15]
- Regions receive consent orders from headquarters. [19].
- EPA OW is the lead on following up on reported releases of chemicals to the Cape Fear River Basin because they were fixed on drinking water. [26].
- (b) (5)
- (b) (5)
- (b) (5)

(b) (7)(A) is the OIG's team OCSPP point of contact. The team may follow up with (b) (7)(A)

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Details:

Document(s) Collected/Identified/Promised at Meeting/Interview

See Source 2 Link: Received 11/06/19

#	Document description/title	Who provided document or where document was acquired	Who or where the anticipated document is to be acquired
A	Copy of the modification to the consent order [Details, point (2)]		(b) (7)(A) (OCSPP POC)

		The modification was made via letters to the company. Sanitized versions are attached in the zip file.	*See Source 3A* Link: *and Source 3B* Link:
Link: **Index - Draft RptResults Etc..docxB**	List of all studies submitted by the company with the PMN submissions, during the review period, and in response to the CO.	*Attached is the list. The first table lists all studies and attachments submitted by the company with the PMN submission and during the review period; tests are highlighted in gray. The second table lists the studies submitted in response to the Consent Order.*	(b) (7)(A) (OCSPP POC) *See Source 4* Link:.
C	Count of the number of unique new chemical notifications covered by the TSCA section 5(e) Consent Orders that have been issued since the beginning of the New Chemicals Program	- *2,241 (includes both TSCA section 5(e) and 5(f) Orders)* - *2,238 (only includes TSCA section 5(e) Orders)*	(b) (7)(A) (OCSPP POC) *See Source 2, third bullet, yellow highlight* Link:
D	Description of the 2009 review process to review materials received from Chemours/DuPont [Details, point (3)]	*See the Chemistry Assistance Manual. Section 1.6.2 of this document describes the Standard Review process.*	(b) (7)(A) (OCSPP POC) *See Source 5* Link:
E	When asked about Chemours/Dupont's compliance, (b) (7)(A) offered that they (OCSPP) will check in with the program manager for the, (b) (7)(A) [Details, point (11)]	(b) (5) [redacted]	(b) (7)(A) (OCSPP POC) *See Source 2*Link: *fifth bullet, yellow highlight .*
F	Regarding the use of the 99% figure-- EPA responded that they would have to talk to the program manager, (b) (7)(A) [Details, point (14)]	*The 99% efficiency requirement had been used in at least two Consent Orders for previous similar cases before it was used in the Consent Order for P-08-508 and P-08-509.* (b) (5) [redacted] *The 99% removal efficiency requirement was a stringent but "achievable" level* (b) (7)(A) [redacted] *, the 99% value was intended to send a firm message that any releases of the PMN substances must be minimized.*	(b) (7)(A) (OCSPP POC) *See Source 2*Link: *last bullet, yellow highlight*

Discussion Area Topics:

Introduction/Background

(1) Following introductions, EPA [(b) (6)] requested a brief overview of the OIG project objective. OIG [Chad Kincheloe] stated the objective and a summary of the entrance conference [See workpaper Link: A.15 - Entrance Conference with Agency]. EPA [(b) (6) explained that the Consent order (b) (7)(A) from Chemours/DuPont. This information was useful to obtain toxicology values and for collaboration with the Office of Water. OCSPP's toxicologist was able to work with OW using this data that was received. (b) (6) also emphasized that the team should refer to the consent order as such, and not a "consent decree."

TSCA 5e Consent Order

Link: **Index**

(2) EPA [(b) (6)] said that the office received approximately 1,000 Pre Manufacturing notifications [PMN] per year before the law [referring to TSCA] was amended [Note TSCA was amended in 2016]. They would regulate manufacturing of new chemicals if they thought ~~it~~ the new chemical presented an unreasonable risk by using the risk assessment. Most chemicals would not reach that level, but for the DuPont/Chemours PMN EPA had concerns this was persistent and bioaccumulative toxin. EPA [(b) (6) continued to explain (b) (7)(A) EPA (b) (6)] said that there was a concern about human health and environmental risks, so the (2009 Chemours/DuPont) order included additional testing requirements, and requirements for protection of workers in the work place. EPA [(b) (6) said that the worker protection requirement were modified. The team requested a copy of the modification. EPA said that the tests may no longer be CBI (confidential business information), although some of the processes may still be CBI, so then would remain CBI.

Data Review/Compliance Monitoring

(3) OIG [Chad] asked about the 2008/2009 PMN review of new chemicals process and if it differs from what is listed on the website now. EPA [(b) (6) responded yes, that the 2008/2009 process (b) (7)(A) . Chad requested a description of the 2008/2009 process to review the material received from Chemours/DuPont. (See Source 5Link:)

(4) EPA (b) (6) said that since the 1970's, everything that they (b) (7)(A) . At the time there were 2,000 notifications per year and they only had 90 days. They (b) (7)(A) so the standard became (b) (7)(A) .

OIG [Barry Parker] asked if this was an irritative process—What goes on to help you determine what would go into the consent order? EPA (b) (6) responded that the process is ongoing. The consent order required all the tests. For instance there were results of testing submitted in the PMN that indicated a risk for cancer, and the EPA had questions about statistical analysis. When the EPA orders tests, they may also request that the protocol be shared to help assist

Chemours/DuPont make sure EPA is getting what it needs from the tests. If Chemours/DuPont had to redo their analysis they would be expensive and take a long time
Link:
Link: **(5)** OIG [Chad] said that it seems that the EPA has done a lot of compliance monitoring with the required tests in the consent order. EPA (b) (6) responded that they have lists of all the tests that are submitted. Some tests came in with the notice (Pre- Manufacture Notice, PMN). The consent order required certain tests. They had other tests listed and this would be useful information to the EPA. EPA(b) (6) continued that in 2008 the PMN came in and they (Chemours/DuPont) turned in tests. Link: Index EPA added that Compliance Monitoring (b) (7)(A) [redacted] ecord keeping, related to when number of pounds of chemical is produced which would trigger additional testing. The order requires Chemours/DuPont to keep certain items on file. The main thing for OCSPP is the testing. – EPA requests, reviews and then will look back and see if the risk estimate has changed.

Record Keeping Link:

(6) OIG [Barry] asked about the record keeping and terms and conditions in the consent order—is it standard or specific in the consent order. EPA responded that it is pretty standardized. They use a template. OECA originally reviewed (b) (7)(A) [redacted]

Communication

(7) OIG [Barry] asked about how OECA decides which facilities to inspect, and if this information is shared with OCSPP. EPA responded that OECA (b) (7)(A) [redacted]. It is up to their (OECA's) enforcement (b) (7)(A) [redacted] They do have monthly coordination meetings between OCSPP and OECA on overarching topics. OIG [Sarah Davidson] asked about the exemption process. EPA responded yes they have an exemption process which a facility can be exempted from doing certain things, but this is not applicable in the DuPont/Chemours case. However, the consent order does have a reporting process.

(8) OIG [Barry] asked communication (b) (7)(A) [redacted] process they have weekly calls with regional offices and OECA to discuss. OCSPP doubts that this (b) (7)(A) [redacted]

Compliance Monitoring

(9) OIG [Barry] asked does the EPA have a documented procedure or process for monitoring the expected benefit of TSCA consent orders. The EPA responded that the results of testing making sure testing protocols and Quality Assurance are followed.

Link: **(10)** OIG [Chad] said that during the meeting with OECA we learned that there were over 2000 of TSCA 5e orders—how does OCSPP keep a handle on making sure tests are coming in, is someone assigned? EPA[(b) (6)] said that a project manager (PM) is assigned to each case. And contractors. Contractors helped to forward studies to the assigned PMs. Studies come in to the EPA electronically and it was forwarded to the PM. Back then this wasn't electronic. The studies are reviewed to see if the study was valid. OCSPP have criteria for time, usually 6 weeks. If the study is not valid, the EPA can ask the company to redo. EPA (b) (6) said that normally they specify what tests and standardized guidelines. So that's where OCSPP wants to see the protocol. Some chemicals are tricky but they look at the chemical and see how well it would fit into the test options. Then study will undergo a full review from OPP (Office of Pesticide Programs).

A PM is assigned to the consent order. However, back then it was all via paper. A lot of the information is typically CBI so it is all logged and goes to the appropriate point of contact. The CBI program would have records.

Link: **(11)** OIG [Barry] asked the EPA how they would characterize company compliance with providing the study. Or have there been any issues along the way? (b) (7)(A), (b) (6) [redacted] (See Source 2Link:)

(12) OIG [Natasha] asked if and how the testing requirement timeframe is monitored. EPA responded yes, but it is based on production value not on time. Where they do not require testing based on time, they have to provide annual or quarterly submissions on what production value has been. If reaches certain threshold, then this information is reported in CDR (Chemical Data Reporting, https://www.epa.gov/chemical-data-reporting). The CDR reporting threshold has changed. It used to be cumulative chemicals produced between 3 and 4 years. Now it's every chemicals produced the year before. It's changed a little bit.

(13) OIG [Barry] asked if there were any amendments to the consent order. EPA responded that there are two separate requests on a respirator protection and only one modification that came out of it. See Sources 3A Link: and 3B Link:)

99% Recapture Figure

(14) OIG [Barry] asked about limits on surface water and record keeping requirements, and how and why they were set at 99%. (b) (6), (b) (5) [redacted] See source 2 F Link: for response.

(15) OIG [Chad] asked about the role of technology in recapturing the GenX product. (b) (7)(A) [redacted] this to the company. The company must meet this requirement however it is deemed possible. Link: The onus is on the company to meet the standard, and the EPA requires that the company must document and keep records.

Link: **(16)** OIG asked, for the 2,000 consent orders out there, are there a lot that have a 99% recapture requirement? Is this a unique requirement? EPA (b) (6) responded that he is unsure if the total is unique. It is more common that it would say that a company cannot discharge and cannot exceed X amount, or that they must incinerate everything. See source 2 F Link: for response.

Facility Manufacturing

(17) OIG [Barry] asked if the consent order is specific to the facility or the process. EPA (b) (6) said that the consent order is written for all facilities. They believe that there were 3 facilities included in the PMN, however, this should be discussed with OECA.

(18) When they conduct an assessment, the PMN identifies the facility. The manufacturing process may be at a specific facility, but the company may move the product to another facility or sell to customer producers. The EPA has to (b) (7)(A) [redacted] and assess to best of their knowledge, and make assumptions to where it (the product) might go. Each of the 3 Chemours/DuPont facilities were included in risk evaluation at the time of reviewing the PMN.

(19) OIG [Chad] asked, after the Consent order is issued, how the regions know which facilities are involved or if this information comes from the PMN. The EPA responded that the PMN does not break down this information by site. The regions receive a copy of the consent order from headquarters. The site manufacturing identified in the PMN dictates what region notifications from EPA HQ goes to.

(20) OIG [Sarah] asked about a scenario where the company may decide to open a new site outside of Region 4—would the EPA have awareness of this. The EPA responded no, that the responsibility would be on the company to disclose. So once the product is in the inventory the EPA has no knowledge if the production proliferated over time.

(21) OIG [Chad] restated the question—with this Consent Order, since it is manufactured at a different facility, would (b) (7)(A) [redacted] facilities are bound to the consent order as well. The company can be in full compliance at one facility, and still releasing product from one of their existing other facilities. But this is not covered by the PMN. It is (b) (7)(A) [redacted]. OCSPP reminded OIG that the New Chemical EPA program is Section 5 of TSCA. If a chemical is already in existence, then it would be covered by TSCA section 6, which is different.

Manufacturing Legal Questions

(22) The OIG asked (b) (7)(A) [redacted] They are looking at the chemical process because the 2 Gen X chemicals listed in the PMN and consent order are a new process.

(23) OIG [Chad] said, to oversimplify the process, for a new chemical, if there is an existing chemical, then one wouldn't expect to see much information in the new chemical application you received. EPA responded that there are requirements to describe the manufacturing process, (b) (7)(A) [redacted] Under this program, OCSPP is only looking at the new chemicals. There is a need to consult law experts as he is unsure if this is a definitive decision. There is no obligation to report by-products as part of the PMN.

5e Re-review and Oversight

(25) OIG [Barry] referred to a press release that discussed the governor of North Carolina had contacted the EPA-- would it be difficult to revise the 5e consent order. The EPA responded that once it became aware of new information, they can re-review. EPA said that they believed the governors press release covered a process not in the PMN and consent order, but we would need to talk to OECA.

(26) OIG asked the question about once the concerns of potential contamination in the Cape Fear River Basin, was OCSPP involved in discussions on how to respond. OCSPP said that they (b) (7)(A) [redacted] EPA OW is the lead because they were fixed on drinking water. They (EPA) had calls with multiple mayors, and worked closely with Region 4 staff. They (EPA) had involvement with the region, and the state. They (EPA) worked with OW consistently and had multiple high level calls. Region 4 is the first line for the states, and then OW. Region 4 included TSCA staff as necessary in the calls, but core TSCA is largely a headquarters program, so OCSPP expected their AA level was involved if necessary.

(27) OIG [Chad] asked about revisions to the consent order templates. The EPA responded that there are a lot of paragraphs that are standard "boiler plate" and then it is crafted to specific chemicals.

(28) The EPA said that there were talks from an unconfirmed political person at the AA level who discussed trying to automate some parts of the consent order templates and wanted to streamline and redesign the process. OECA and OGC are also involved in reviewing any proposed changes. There has not been anything issued on this yet.

(29) The OIG [Sarah] asked if newer consent orders include reporting for production volumes. There were a lot of adjustments under the Lautenberg Act. There are a lot of requirements that state that certain testing must be done. So some production volumes have triggered testing—for

instance, when the company reaches a certain volume, then certain animal tests need to be done. OCSPP does consider other things before requiring vertebrae testing.

(30) The OIG [Chad] asked an approximation of the number of 5e orders. The EPA (b) (6) will follow up on this information [See Source 2Link:]

Areas for improvement

(31) The OIG [Natasha] asked about potential areas to improve the program. The EPA said that there is an idea to streamline consent orders to modernize the process to make it easier for project managers. They are far from complete, but that is the path the program is on. They continued to explain that the "way they leap is established." The process is not electronic. (See 28 above.)

(32) The OIG asked if there were any communication challenges. OCSPP responded that they believe that OECA can conduct more inspections and make them public, similar to the effect of the lead renovation, repair and paint (RRP) program (b) (7)(A)

[(b) (6) mentioned examples of RRP program press releases, one of which targeted a TV show that had RRP violations.

(33) EPA (b) (6) ended their comments by sharing that they believe the program to be in tune and connected. They have monthly standing meetings with other offices where each side can bring up issues for discussion. They all know each other.

(34) The OIG confirmed that (b) (7)(A) is the POC for follow up information.

-END -

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WORKPAPER TITLE: Findings Meeting with OECA

Name	Completed Date	Comments
Prepared by: Sarah Davidson	1/27/20	
Reviewed by: C. Kincheloe 1/27/20		**[x]:** I reviewed this WP and found it satisfactory. (No comments were provided.) **[ ]:** I reviewed this WP and found it satisfactory. I also included **comments in a blue colored font**. **[ ]:** All comments have been resolved.
Edited by: C. Kincheloe	4/23/20	Added note that wp contains potential law enforcement sensitive information

Note: WP contains Potential Law Enforcement Sensitive Information

Meeting/Interview Information:

Date & Time/Duration	Meeting Location	Invitation, Agenda, Questions (*If applicable*)
1/21/2020, 1:00PM	4140 WJC South Building	Source 1 Meeting Invite Source 2 Sign in sheet

#	Description	Source Document
1	**Meeting Invite**	**Source 1 – OECA Meeting Invite.pdf**
2	**Sign In Sheet**	**Source 2 – OECA sign in.pdf**
3	**Email followup from** (b) (7)(A)	**Source 3 – Email followup from** (b) (7)(A) **.pdf**
4	**Delegation of Authority** https://intranet.epa.gov/ohr/rmpolicy/ads/dm/12-10.htm retrieved 1/27/20	**Source 4 – OHR Intranet – Administrative Policy – Delegations Manual, 12-10. Regulation Pending the Development of Information.pdf**

Participants:
See source 2

Scope: Conduct findings meeting with Agency

Conclusion(s):
On January 21, 2020 the OIG briefed OECA on proposed findings and potential recommendations.

OECA is (b) (5) [redacted] (see summary G below)

Summary:

A. After introductions, Jeff started the meeting by reminding OECA that this is a bluebook review, which is somewhat different than OIG reviews OECA may be familiar with. Jeff described the differences between the two. These differences included:

Bluebook reviews follow CIGIE standards, and have a few less steps needed, whereas "regular" reviews follow the GAO yellow book.

Bluebooks do not have discussion documents which are shared with the agency, instead a findings meeting where findings and potential recommendations are read to the agency.

Bluebooks only allow for a 15-day agency review of the draft report.

B. Jeff reminded OECA of the objective of this review:

To determine what actions EPA took to verify compliance with requirements of the 2009 TSCA Premanufacture Notice Consent Order with DuPont [Chemours] to prevent release of the chemical GenX in the Cape Fear River basin.

C. Jeff went through the draft findings below:

Until June 2017, EPA actions to verify compliance (b) (7)(A), (b) (5) tracking and review of Chemours provided information (b) (7)(A), (b) (5) [redacted]

Region 4 conducted EPA's first onsite TSCA compliance monitoring inspection at the Fayetteville Works Facility on June 28-29 2017.

Region 4 was unaware of the Consent Order and its requirements until the inspection was requested by EPA headquarters.

(b) (5) [redacted]

D. During Jeff's discussion of the draft findings, OECA provided the following observations:

(b) (6) [redacted] said regional awareness of 5 (e) consent orders is an issue. For this specific consent order, it would probably have been sent via mail to the region. (b) (6) [redacted] indicated

that OCSPP could speak to any written EPA policies or procedures, but said he thought there were some policies but he did not think they were EPA policies and procedures.

(b) (6), (b) (5)

E. Jeff then read the following from our draft and asked for feedback from OECA:

On April 24, 2018, EPA Region 4 issued a report on the results of (b) (5) Fayetteville Works TSCA compliance inspection, which included compliance with review of the 5(e) Consent Order. On February 13, 2019, (b) (5) EPA OECA's Office of Civil Enforcement sent a TSCA Notice of Violation to Chemours. According to OECA staff, the Notice of Violation did not include any violations of the 5(e) Consent Order at the Fayetteville Works Facility. (b) (5)

(b) (5) did not have anything to add.

F. Jeff then read the proposed recommendations which he said are directed to OCSPP:

1. Implement a process for Office of Enforcement and Compliance Assurance review and approval of TSCA 5(e) Consent Orders terms and conditions they will be responsible for verifying during compliance monitoring and enforcement activities.

2. Implement a process to verify that EPA regions acknowledge receipt of final TSCA 5(e) Consent Orders for regions having facilities operating in their region subject to the terms and conditions of the consent order.

OECA responded (b) (5)

OECA also said that there is a delegation of authority that might be helpful to the OIG to consider in adding possibly clarity to the first recommendation. ((b) (6) forwarded that to the OIG, see source 3 and 4 above)

OECA did not have any suggestions on recommendation 2.

G. In closing out the meeting (b) (6) from OECA said that OECA is (b) (5) [redacted].

WORKPAPER TITLE: 02/11/2020 Follow up with OECA_ (b) (6)

Name	Completed Date	Comments
Prepared by: Natasha Henry	02/12/20	
Reviewed by: C. Kincheloe	2/12/20	**[x]:** I reviewed this WP and found it satisfactory. (No comments were provided.) **[ ]:** I reviewed this WP and found it satisfactory. I also included **comments in a blue colored font**. **[ ]:** All comments have been resolved.
Edited by:		

Purpose: To document informational follow up email communication with the (b) (6), Office of Enforcement and Compliance Assurance (OECA).

Source(s):
Participants:
[last name, first name]

#	Name Email communication	Organization/Position	Contact Information
	EPA		
1	(b) (6)	OECA (b) (6) Attorney-Adviser	(b) (6)
	OIG		
2	Henry, Natasha	OIG-OAE-TCMPP Health Scientist	212-637-3193

Scope: PRG **Section D Interviews**

Conclusion(s): In response to a query from Deputy Inspector General, Chuck Sheehan (see wp A.21, Source 4 Link: pdf page 3 of 4, #1) the team followed up with OECA lawyer, (b) (6) to determine if there were additional EPA program areas that issued consent orders without OECA review. (b) (6) responded that (b) (6) is not aware of any other "Consent Orders" issued by non-enforcement entities (meaning outside of OECA, Regions and delegated state enforcement).

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Details:
Email correspondence in reverse chronological order (Source 1 Link:):

From: (b) (6) @epa.gov>
Sent: Tuesday, February 11, 2020 12:06 PM
To: Henry, Natasha <Henry.Natasha@epa.gov>
Cc: (b) (6) @epa.gov>
Subject: Re: OIG question regarding consent orders

Natasha,

(b) (5) . I am not aware of any other "Consent Orders" issued by non-enforcement entities (meaning outside of OECA, Regions and delegated state enforcement). (b) (5)

(b) (6)
U.S. EPA
Attorney
(b) (6)
EPA.gov

From: (b) (6) @epa.gov>
Sent: Tuesday, February 11, 2020 10:21 AM
To: (b) (6) @epa.gov>
Cc: (b) (6) @epa.gov>
Subject: OIG question regarding consent orders

Hi (b) (6)

Are you aware of other EPA programs which may issue consent orders that are not reviewed by OECA (similar to 5e consent orders)? If so, what programs?

Thanks,
Natasha

Natasha Henry
Health Scientist | US EPA - Office of Inspector General
Office of Audit & Evaluation:
Toxics, Chemical Management, and Pollution Prevention
290 Broadway | Suite 1520 | New York, NY 10007-1866
☎: (212) 637-3193 | ✉: henry.natasha@epa.gov

- **END** -

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WORKPAPER TITLE: 10/23/19 OECA Interview

Name	Completed Date	Comments
Prepared by: Natasha Henry	11/18/19 12/10/19	Notes and access delayed due to computer malfunctions.
Reviewed by: C. Kincheloe Edits in blue font 12/4/19	12/19/19	[ ]: I reviewed this WP and found it satisfactory. (No comments were provided.) [X]: I reviewed this WP and found it satisfactory. I also included **comments in a blue colored font**. [ ]: All comments have been resolved.
Edited by: NH for indexing 02/04/2.		

Link:

Purpose: To document informational interview with the Office of Enforcement and Compliance Assurance (OECA).

****MAY CONTAIN ENFORCEMENT SENSITIVE INFORMATION. REVIEW BEFORE RELEASE.****

Source(s): Team notes

Meeting/Interview information:

Date & Time/Duration	Meeting Location	Invitation, Agenda, Questions (*If applicable*)
10/23/2019, 01:00 PM - 02:00 PM	EPA building, Room 7140 Washington, DC DCRoomARS7140/DC-Ariel-Rios-OECA-OC **Conference phone number:** (b) (6) **Conference ID:** (b) (6)	**S1-** OECA meeting Sign In Sheet Link: **S2-** Email Correspondence **S3-**

Participants:
[last name, first name]

See Source 1. Link: Sign In Sheet OECA meeting 10.23.19

#	Name (P) __*Phone Line Attendance* (V)__*VTC Attendance*	Organization/Position	Contact Information
	EPA		
1	(b) (7)(A)	OECA-OCE-WCED-WEB (b) (7)(A)	(b) (7)(A)
2	(b) (7)(A)	OECA-OCE-WCED-CRREB (b) (7)(A)	(b) (7)(A)
3	(b) (7)(A)	OECA-OCE-WCED-CRREB (b) (7)(A)	(b) (7)(A)
4	(b) (7)(A)	OECA-OCE-WCED-CRREB (b) (7)(A)	(b) (7)(A)
5	(b) (7)(A)	OECA-OCE-WCED-PTEB	(b) (7)(A)

		(b) (7)(A)	
6	(b) (7)(A)	OECA-OCE-WCED-CRREB (b) (7)(A)	(b) (7)(A)
7	(b) (7)(A)	(b) (7)(A)	No information provided. Able contact through OECA.
8	(b) (7)(A)	OECA-OCE-WCED-CRREB (b) (7)(A)	(b) (7)(A)
	OIG		
9	Kincheloe, Chad	OIG-OAE-TCMPP Project Manager	312-886-6530
10	Parker, Barry	OIG-OAE-TCMPP Program Analyst	202-566-2918
11	Davidson, Sarah	OIG-OAE-TCMPP Program Analyst	202-566-2529
12	Henry, Natasha	OIG-OAE-TCMPP Health Scientist	212-637-3193

Scope: PRG **Section D Interviews**

Conclusion(s):

****MAY CONTAIN ENFORCEMENT SENSITIVE INFORMATION. REVIEW BEFORE RELEASE.****

- On Wednesday, October 23, 2019 at 1pm ET, the OIG team met with OECA.
- The consent order was received in headquarters and then sent to Region 4 to take the lead. [2]
- The study [see workpaper B.2 Link: PFAS Research Study] led to the discovery of a process to detect Gen X[6].
- In records, it appeared that Gen X was being incinerated, but air testing revealed signs of air releases. [9].
- According to the EPA, Chemours decided after the fact that Gen X was being released as an unintended chemical conversion degradation so it wouldn't count against them as per the Consent Order. [10].
- In 2015, there was not a process to detect Gen X [11]. OECA described this Consent Order (b) (7)(A) [redacted]. There are also discussions regarding the potential sources of contamination as Gen X can also be created as a byproduct.
- Section 5e only applies to brand new chemicals that have not yet entered commerce, and as such cannot be amended again as the chemical would no longer be new. Once a chemical has entered commerce, it would be regulated under an alternative section of TSCA (section 6) [20]. However, this consent order was amended twice to provide a clarification and not a revision [See workpaper D.2 Meeting with OCSPP, source 3A Link: and source 3B Link:].
- OECA monitors compliance by use of tools such as (b) (7)(A) [redacted] if flagged, they would follow up, (b) (7)(A) [redacted]

(b) (7)(A) [redacted]. There are ongoing investigations/ inspections as DuPont/Chemours has more than one facility that may be involved. [31]

- The EPA is currently reviewing improvements to the program regarding creating databases to combine and review data received. They will also have a new model for the Consent Order [32].
- There are no program metrics or deliverables. [35].

Source 1: Meeting Sign in Sheet
Source 2: Email to schedule OIG meeting with OECA
Source 3: Region 4 Sanitized Report_ Fayatteville
Source 4: Notice of Inspection_ Fayetteville
Source 5: Email of FY 19 TSC Core Inspection

Note: Additional documents of inspection reports and Notices of Inspection were received for additional Chemours facilities. They are out of scope, and not included in this workpaper/ however they can be analyzed at a later date if deemed necessary.
[Documents include Inspection Reports for two additional Chemours facilities-- Washington Works (1) and Chambers (2) and their respective Notice of Inspections (NOI) letters (2).]

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Details: **MAY CONTAIN ENFORCEMENT SENSITIVE INFORMATION. REVIEW BEFORE RELEASE.**

Document(s) Collected/Identified/Promised at Meeting/Interview - (*If NOT applicable, delete table*)

#	Document description/title	Who provided document or where document was acquired	Who or where the anticipated document is to be acquired
A	Chemours R4 Sanitized Report_ Fayetteville	OECA-(b) (7)(A) [redacted]	Source 3
B	Chemours Notice of Inspection Fayetteville	OECA-(b) (7)(A) [redacted]	Source 4
C	TSCA Core Inspection numbers	OECA-(b) (7)(A) [redacted]	Source 5

Note: This meeting took place with the EPA's Office of Enforcement and Compliance Assurance (OECA). (In these notes, references to EPA refer to staff from the EPA OECA.)

Discussion Area Topics:

Background

(1) EPA ((b) (6) [redacted]) began the meeting by explaining that there are two categories of information that they believe is relevant to their work for this evaluation:

- The first is the 5e process and what their inspectors look for, what they typically do. EPA explained that they ask for a lot of information. They also have a copy of the Consent Order so that the team can see what the landscape looks like.
- The second aspect is their (EPA's) work with (b) (7)(A) [redacted] who conduct inspections, including of the Fayetteville facility.

OIG (Chad Kincheloe) asked if there were additional aspects. EPA (b) (6) referred the team to the inspection report. He explained that this was a (b) (7)(A) TSCA. [Evaluator note: For more information on "Core TSCA" please see https://www.epa.gov/compliance/compliance-monitoring-strategy-toxic-substances-control-act-tsca, first bullet].

Inspection Process

Link: **Index**

(2) OIG asked EPA to describe the events that led up to the inspections. EPA (b) (6) responded that this work was high profile. This work was initially sent to Region 4 to look at as they had the lead on this inspection. (b) (6) explained that the appropriate regions implement the program and headquarters will send the Consent Order to the regions.

For the inspections that they (OECA) handle, they receive those Consent Orders. They review and identify the company, locations, and various provisions found in the order—for instance, restrictions on water use, test requirements, PPE (personal protective equipment), etc—and other requirements found in the order. There are certain restrictions/ requirements in the Consent Agreements. EPA (b) (6) explained that it is good to prepare before the in-person inspection to know what is involved.

(3) EPA (b) (6) concurred that that was a good description and they also (b) (7)(A) CBI (Confidential Business Information) and TSCA 5e inspections over the year. There are also certain chemicals that they review based on information received via tips and complaints.

(4) (b) (6) reinforced that if they can identify (b) (7)(A) Notice of Inspection (NOI). (b) (6) agreed to provide a sanitized version of this document. [**See Source 4** Link:] This process culminates by engaging with the company. They also (b) (7)(A) for Fayetteville as a great template for what they do.

(5) The continued on to explain that even for neutral scheme inspections, the process can be complex and data driven. Gen X is being manufactured at other sites (facilities other than in West Virginia and North Carolina). They are also in New Jersey—this is public knowledge. (b) (5) .

Research Study

(6) Next, the EPA discussed the work with the EPA Office of Research and Development (ORD) and their research into PFAS (per- and polyfluoroalkyl substances, which include "Gen X"). See

Workpaper B.2. Link: PFAS Research Study]. In response to an OIG questions, OECA responded that non-target mass spectrometry was used to analyze and pull out peaks and valleys to identify PFAS. Newer technology gave them the ability to test for Gen X. OIG (Chad and Sarah) responded that the team will follow up with Region 4, and then asked about the terms and conditions and testing requirements in monitoring compliance. OECA (b) (6) said that when there is a consent order it is up to the company to prove that they are testing. At times the company may get an agreement to do alternative testing. The EPA collects this information and relies on the analysis to say what is received.

Waivers

(7) EPA explained that there can be additional waivers from OPPT (Office of Pollution Prevention and Toxics). For example, regarding respiratory protection—this was not a standard that the company could reach so they worked out an agreement to show that it would meet the standard to be adequately protective of the workers and they have documentation of this discussion with the EPA. They amended the Consent Order See workpaper D.2 Source 3a Link: Comm fm EPA 6-28-12_Redacted.pdf and Source 3b Link: D.2 – Comm fm EPA 8-2-13_Redacted.pdf) but sometimes revisions may not show up.

(8) OIG (b) (6) asked for further information regarding these records. (b) (7)(A), (b) (6) [redacted] imported or manufactured, show production records and compare this against time limits.

Recaptured product

(9) OIG (b) (6) asked about the requirement to show recaptured product. (b) (7)(A) [redacted] they relied on Chemours to provide the requested data. In the records it appeared that Gen X was being incinerated, however, air testing showed signs of air releases.

(10) Chemours also, after the fact, decided that Gen X was being released as unintended chemical conversion degradation—they (Chemours) argued that as such, this wasn't a part of the Gen X manufacturing process so shouldn't count against them as per the Consent Order. Gen X precursors are the sources for the Gen X releases. Based on the waste water sampling, they (Chemours) stopped releasing to their onsite waste water treatment, but Gen X contamination was still identified.

Link: **(11)** In response to the OIG asking for clarification OECA (b) (6) said this is a (b) (5) [redacted]

(b) (5) [redacted].

PMN- premanufacture notice

(12) When the company came in with the PMN, there were a lot of questions—for instance, what kind of PPE and other basic engineering controls EPA explained that page 10 of PMN also asks about exposure to the chemical because worker exposure is a big deal. They are potentially exposed for 8 hours a day, so EPA wants to answer that along with what the appropriate response to protect workers is. **MAY CONTAIN ENFORCEMENT SENSITIVE INFORMATION. REVIEW BEFORE RELEASE.**

(13) OECA (b) (6) asked if the company ramped up production quicker than expected. ERG responded no, since they were not held to production limits for the first year of production.

(14) EPA (b) (6) said that the agency was interested in getting PFOA (for more information, see https://www.epa.gov/pfas/basic-information-pfas) off market. (b) (7)(A) [redacted].

Title 5

(15) EPA (b) (6) shared that the ERG discussed that the company had a lot of records on the 99% issue and asked ERG to explain. ERG (b) (6) said that the Fayetteville location was different in terms of documentation. They (Chemours) basically showed that they had ceased the waste water discharged to process water or cleaned waste. They also showed that the "process vents" go through a scrubber. The company gave the efficiency and provided that 99% was going out in organics in the airstream. They also provided production records. (b) (7)(A) [redacted] EPA (b) (6) added they would want to see what the company is testing their stacks and outfalls. ERG (b) (6) continued that there were limits on PFOA through Title 5 but not for GenX. Now test methods have changed. Title 5 was for PFOA and updates to Title 5 perhaps assumed that PFOA testing will be inclusive to new chemicals. Now in the past year, there is a test method for a Gen X acid.

99% recapture

(16) OIG (Chad) asked about challenges with the interpretation of the consent order. EPA (b) (6) responded that one company interpretation is that there is 99% recapture across all facilities. So there can be 65% at one facility, 34% at another as long as there is 99% across all facilities.

(17) OIG (Barry) asked about the documentation of the process to capture waste from this process. Is this by volume or another process? Also, is there an issue where some of waste water

has been imported? ERG (b) (6) responded that there was pipping that used to go to the waste water system in this process. The chemical wasn't going there anymore—instead they look like large trailers, similar to a double-wide trailer. And pumping—there are several on site. They received waste profiles from several vendors to see who would incinerate. ERG visually inspected other facilities and relied on test data. With the Washington Works facility, the Consent Order is with the state so Chemours has to monitor and submit data, and perform calculations.

(18) EPA (b) (6) said (b) (7)(A) and not there.

Amendments

(19) In response to an OIG question on changes to the Consent Order, the EPA responded that they can amend a Consent Order, but they wouldn't unless it was necessary. OIG (Barry) asked if this can be fixed in the revised order. EPA (b) (6) said that this is the goal for Fayetteville. The goal is zero emissions from per-fluorinated compounds (b) (7)(A). EPA (b) (6) said the EPA can reopen or amend.

(20) EPA (b) (6) questioned the feasibility of amending 5e orders and explained that TSCA Section 5 is about new chemicals. Section 6 is about commercialized chemicals. Section 5 allows the EPA to impose certain requirements with new chemicals because EPA doesn't understand them yet. Essentially it allows for the use of new chemicals under requirements. Section 6 is for chemicals that have been commercialized. For Section 5, a chemical can only be new once. Companies can always consent/ agree to these orders to avoid bad press etc. but EPA cannot open 5e order and amend unilaterally.

(21) They can issue a 5e to allow a company to create the chemical for first time but it is not designed to address chemicals already in commerce—they would have to use TSCA section 6 authority.

(22) Chemours was very aware of the by-product, GenX. These compounds are very valuable, so the company understand what happens. EPA (b) (6) said that EPA (b) (7)(A).

(23) OIG (Natasha) asked about the use of the 99% figure in the consent order. EPA responded that they would have to ask OSCPP. The burden is placed on the company to look for and test for the chemical.

(24) OIG (Sarah/Barry) asked about internal reviews/ audit of the 5e consent order boiler plates although the EPA may not have a great ability to change things with a 5e order. EPA (b) (6) responded that it sounds like a program (OECA/R4) question (b) (6) doesn't want to speak for them, but there is a legal distinction.

Notice of Violation

(25)
OIG (b) (6) asked what initiated the inspections that lead to the NOV (notice of violation). EPA (b) (7)(A) said that when the study broke the news and it caused the EPA to look at the case further. This study didn't come out of OECA, so OIG should talk to the region. Currently PFAS enforcement is a (OECA) priority.

Compliance Monitoring Tools

(26) OIG (Chad) asked if there were any inspections (b) (7)(A), (b) (6) [redacted]. OIG (Sarah) asked who followed up on testing and when it needs to be done bases upon production threshold, outside of inspections. EPA (b) (6) said that the agency looks at testing during an inspection, but chemical production goes into CDR (chemical data reporting). If there is something suspicious identified in CDR, they may take a further look as a part of compliance monitoring.

(27) EPA (b) (6) said that Chemours was submitting all required testing in the 5e order, along with risk information and submitting those documentation to the EPA. EPA (b) (6) said that the NOC (notice of commencement) is a critical step to see if company is manufacturing chemicals. They want to ensure that the company is actually doing it. EPA (b) (6) said that compliance monitoring was an aspect of those things (the process described above).

(28) OIG (Chad) asked about tools the program uses. EPA (b) (6) responded that compliance monitoring is an aspect and they use tools such as the Chemical Data Report (CDR), Toxics Release Inventory (TRI), and the Notice of Commencement (NOC). They use tools, but if flagged, they would follow up.

(29) In response to an OIG question on the Region 4 program, EPA (b) (6) said that he would be surprised if there (b) (7)(A) [redacted]. EPA said that there are more than 2,000 chemicals so there are many things that can be followed up on.

NOV

(30) OIG asked what led to the NOV— if it (b) (7)(A), (b) (6) [redacted] EPA (b) (6) said that there were then discussions about how best to target the inspections at Chemours.

(31) OIG asked the EPA to summarize the key issues that were identified at Fayettville that led to the NOV. EPA (b) (6) responded that there (b) (7)(A), (b) (6) [redacted] with information from the PMN.

CMS, NPMG Documents, Databases

(32) OIG (b) (6) asked if there were any changes to the CMS regarding 5e. EPA (b) (6) responded that they are (b) (7)(A) [redacted]. They are also excited about having a new model for the Consent Order, which they are reviewing, and for the influence the publicity of the Chemours facilities is having on enforcement. (see follow-up question 39)

(33) OIG (Chad) asked if there were any substantial changes to the CMS and NPMG. EPA (b) (6) replied that one changes was the regional realignment. (b) (7)(A) [redacted]

(34) EPA (b) (6) said that the numbers in the OIG's CDR report, (See the Chemical Data Report https://www.epa.gov/sites/production/files/2018-07/documents/_epaoig_20180727-18-p-0226.pdf) for regional inspections are not current. (b) (6) explained that (b) (7)(A) [redacted]. This is an important focus area.

Roles and Program Metrics

(35) In response to the OIG asking about the roles and responsibilities for HQ, regional and contractor as inspectors, the EPA responded that (b) (7)(A), (b) (6) [redacted] The EPA is working on way to make this viable.

Program Challenges

(36) OIG asked how the EPA would describe biggest challenges and how these can be addressed. EPA (b) (6) described challenges such as being able to harness the information that they need, knowing where companies are located. EPA (b) (6) added (b) (7)(A) [redacted].

Inspections

(37) OIG (Chad) asked about inspections for FY 18-19 and if the numbers were fairly similar. EPA (b) (6) responded that they had about 20 inspections, and one coded for headquarters. DOJ is really proud of their inspection footprint. The OIG requested inspection numbers for 2018 and 2019. (Completed, See Source 5Link:).

(38) OIG (Chad) asked if there were any inspection issues. (b) (7)(A), (b) (6) [redacted] There are many inspections that can trigger enforcement—neutral scheme, tips and complaints, and disclosures.

(39) OIG (Barry) asked about self-disclosures at the Chemours plant. EPA (b) (6) said the word gets out among companies that the EPA is conducting inspections, which can lead to self-disclosures. EPA (b) (6) added that this is all driven by research from what the ORD did. Before this, more 5e had to do with people exceeding limits. They didn't have 5e that involved chemical releases. There has been new testing, for instance, high resolution mass spectrometry. Before that, they didn't have a testing method for chemicals that didn't have a MCL (maximum contamination level) or don't show up as a hazardous waste. Ultimately, publicity is a deterrence factor that works and it creates awareness that OECA is doing this work.

- **END -**

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WORKPAPER TITLE: 11/20/19 Meeting with OCSPP

NAME	DATE	Comments
Prepared/Completed by: Sarah Davidson Comment addressed by clarified in green text SED 11/26/19	Completed 11/25/19	
Reviewed by: C. Kincheloe 11/26/19 Edits made in blue text also see blue 1 under 2nd paragraph of consent order development process. Can you please clarify what reports OCSPP is talking about Comment addressed CK 11/26/19	11/26/19	**[ ]:** I reviewed this WP and found it satisfactory. (No comments were provided.) **[X]:** I reviewed this WP and found it satisfactory. I also included **comments in a blue colored font**. **[x]:** All comments have been resolved.
Edited by: SD added link and highlight 1/29/20		

Link:

Purpose: To document the meeting with OCSPP on 11/20/19 for Project No. OA&E-FY19-0348

Source(s):

Meeting/Interview Information:

Date & Time/Duration	Meeting Location	Invitation, Agenda, Questions (*If applicable*)
11/20/19 11:00AM EST to 12:00PM	DC Room East (b) (6)	Source 1 Meeting Invite

#	Description	Source Document
1	**Meeting Invite**	Link: **D.4 - Followup Meeting on Implementation of EPA's TSCA PMN Consent Order with Dupont.ics**
2	**Sign In Sheet**	Link: **D.4 - OCSPPMeeting1120signin.pdf**
3	**Meeting Notes**	**See Details below**

Scope: Fieldwork Guide Section D Summarize EPA oversight/follow-up procedures included in the 2009 EPA/Dupont (Chemours) TSCA consent order to be implemented to assess compliance and reporting requirements of the consent order.

Conclusion(s):

1. The consent order process has changed since this consent order was created. (See Consent Order Development Process below)
2. OECA reviewed the boilerplate for consent orders but is not involved with the development of consent orders. (See Consent Order Development Process **A** below)
3. OCSPP previously relied on communication between the project manager and the submitter to track the production volume testing triggers. Now the consent orders include production volume reporting requirements (See Monitoring testing below).
4. There is not a uniform tracking system for PMNs/consent orders; OCSPP relies on individual project managers for tracking. (See tracking PMNs below)
5. EPA would not necessarily know if a company begins manufacturing the chemical at a new facility (See tracking PMNs **B** below).
6. OCSPP could not identify any relationship between the violations listed in the NOV at the Fayetteville Facility and the consent order. (See Notice of Violations below)
7. EPA has not issued a Significant New Use Rule for the two chemicals in the 5e consent order. (See Notice of Violation **C** below)

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Details of the Meeting/Interview:

Consent Order Development Process

After introductions, the OIG team asked about the process of developing a consent order. (b) (6) (OCSPP) explained that the process was different when this consent order was developed. Back then, the chemist, toxicologist, exposure accessors, and engineers came together for a "focus meeting" to decide whether to let it go to market (referred to as drop), if they needed to get more information in house or from the seller, or would reach a tentative decision to make a consent order or a non 5e SNUR – at that point a project manager would be assigned. Currently, as soon as submission comes in, it goes through "pre screen." Chemists review it and meet, and then a project manager is assigned. No longer have a focus meeting; now have a scoping meeting; this change is a part of the LEAN process and is still being changed. Assigning the project manager earlier helps to identify missing information sooner.
(b) (6) shared that the workload now is much greater than it was before Lautenberg Act. Each project manager has about 20-30 pre-manufacture notices (PMNs) at a time. The OIG team asked if that affects their ability to follow up on consent orders. (b) (6) said no because under the current administration, they are not doing as many consent orders. When the reports on the PMNs review are done by the chemists, engineers, etc. is currently influx – trying to make the process faster.**1** Before, OCSPP would drop 80% of PMNs but now have to make an affirmative decision in every case. Current administration wants OCSPP to keep up the same pace as before but have to do more work. The new Lautenberg Act also means they have to sanitize everything of CBI and make it publicly available. The branch does have more Project Managers (PMs) now (currently have about 25-30).

Previously, there was a "Chemical Controls Division (CCD) Options meeting." (b) (6) chaired the meetings. PMs brought their cases (PMNs) to those meetings and shared how they think they should regulate this PMN. If it was decided to do a consent order, the PM developed it, and the chief of the chemical control division would be briefed (that's who would sign it). There would also sometimes be negotiations with the company.

Link: **A** The OIG team asked if there is an OECA representative involved in the development of the consent order (b) (6) said no but OECA was involved in reviewing the boilerplate (OIG Analyst note – this is the template used for developing consent orders). (b) (6) added that if there were unusual enforcement aspects, they could get OECA involved.

Currently, there is still a CCD meeting to discuss. A briefing paper is put together. The PM prepares a recommendation summary document with some of the required analysis from Lautenberg Act. Consent order then developed, goes under attorney review, other reviews. Division director no longer signs, that has been elevated to the office director. PM stays in contact with the company.

(b) (6) explained that OCSPP is not regulating with consent orders as much as before except for some categories of chemicals (tracer, PFAS, photoacid generators – toxic, bioaccumulative,

persistent). (b) (6) reiterated that the PM uses the boiler plate to develop the consent order. (b) (6) [redacted] is the current office director who signs the consent orders, but at one point, the assistant administrator pulled that to their level.

Link: **Monitoring Testing**

The OIG team asked about how the PMs monitor testing that is triggered by production volume. (b) (6) shared that the time-based testing triggers are much easier to track. For the production volume triggers, typically the PM would keep in touch with the submitter, and the submitters were very diligent in submitting. Now, OCSPP has updated the boilerplate to require the production levels to be submitted. Companies sometimes request modifications to the consent order requirements. The companies have to submit test protocols before initiating the testing, and they are reviewed by OCSPP. Sometimes, the companies would run into difficulties while testing and asked for modifications to triggers; if justified, OCSPP will modify. Risk Assessment Division is in charge of reviewing and approving testing protocols.

Tracking Pre-Manufacture Notices (PMNs)

The OIG team asked how the PMs track their PMNs/Consent Orders. (b) (6) explained that previously they were developing a system, had contractor support with tracking tests, but the system fell into disrepair, so a lot of the reliance for tracking is on the PMs. (b) (6) added that the PMs do it differently. There is no average number of consent orders per PM, depends on how long you have been there.

The OIG team asked about how the studies get to the PM. OCSPP has established an electronic system for this, but back when this consent order was established, companies submitted the studies by paper; the studies were stored in the CBI center. Consent orders signatures are still handled as paper. Studies are now submitted electronically to the CDX portal and then put in the Chemical Information System. Contractor gets notified when a study is submitted and sends an email to PM who gets it to the Risk Assessment Division for their review. Previously, company would have notified PM that they are sending something.

The OIG team asked how the consent orders gets to the regions. OCSPP usually sign first and then send to company, comes back; now all the consent orders all go to a central place. Contractor writes letter notifying region and/or hq (hq if the regions don't have a TSCA Document Control Officer (DCO)). (b) (6) clarified that region 4 would only get the consent order for the ones with manufacturing facilities within the region. **B** The OIG team asked what happens if the chemical starts being manufactured in another location. (b) (6) said that (b) (6) doesn't know if region would be notified since the company doesn't necessarily have to notify if start manufacturing at a new facility (b) (6) clarified that they would probably not know this through reporting of production volumes either, but there are CDR reporting requirements. The OIG team asked if the PMs compare the production volumes reported to CDR. (b) (6) said that no they don't typically take it to the level of scrutiny.

Modification to the Consent Order

The 2018 Fayetteville Inspection Reports refers to a modification of the order, dated February 1, 2010; the OIG team asked about this modification. (b) (6) said that (b) (6) thinks that this modification is similar to the other ones the OIG team were sent – (b) (6) had sent an email about it. (b) (6) believes that it's about PPE but need to double check. (b) (6) . OCSPP will try to track it down.

Notice of Violations

The OIG team asked about how the 6 violations of TSCA at the Fayetteville facility identified in the NOV are related to the 5 e consent order. (b) (6) clarified that CDR is not related to their program (b) (6) explained that they did not issue a SNUR for these chemicals in the consent order, so the SNUN violation would not have been about this chemical. C OCSPP did not identify any relationship between the violations and the consent order.

Transferring paper documents into the electronic system

The OIG team asked if the paper documents have been transferred to the electronic system. (b) (6) said that for this case, everything has been digitized into CIS, but not sure about the big picture of all the cases. There have been various efforts to scan in the documents, but this is difficult since for example, there are 4000 pages for this case alone.

Contact with OECA

The OIG team asked if the PMs have a point of contact with OECA that they could consult (b) (6) said that the PM wouldn't contact OECA directly; (b) (6) would make that contact, but they have regular contact with WCED (b) (6) .

WORKPAPER TITLE: 11/04/19 OIG/Region 4 meeting

Name	Completed Date	Comments
Prepared by: Barry Parker	11/05/2019	
Reviewed by: C. Kincheloe (note team sent email to R4 on 11/7 to confirm we captured the details correctly. WP will be updated to include response once received)	11/13/19 1/9/2020	**[x]:** I reviewed this WP and found it satisfactory. (No comments were provided.) **[ ]:** I reviewed this WP and found it satisfactory. I also included **comments in a blue colored font**. **[ ]:** All comments have been resolved.
Edited by: Barry Parker	01/09/2020	As noted by reviewer CK above, follow-up post meeting was initiated and completed – SEE wp D3.a 11/04/19 R4 mtg. follow-up
Edited by: Barry Parker Natasha Henry C. Kincheloe	01/23/2020 01/30/20 4/23/20	Corrected typo Indexing. Note added that wp may contain potential law enforcement sensitive information

Note: WP contains Potential Law Enforcement Sensitive Information

Link:

Purpose: To document a 11/04/2019 OIG/Region 4 meeting identifying information relevant to the assignment's objective regarding the EPA 2009 TSCA Consent Order with Dupont (currently Chemours) concerning the GenX production at the Fayetteville Works in Fayetteville, North Carolina (NC).

Source(s): x

Meeting/Interview information:

Date & Time/Duration	Meeting Location	Invitation, Agenda, Questions (*If applicable*)
11/04/2019, 10:00 - 10:35 A.M. (35 minutes)	Teleconference; (b) (6), Use code: (b) (6)	**N/A**

Link:

Participants

Region 4:

Larry Lamberth, Lamberth.Larry@epa.gov
- South Enf. & Compliance Section Chief, R04-ECAD-CSLEB, 404-562-8590

Kimberly Bingham, Bingham.Kimerly@epa.gov, 404-562-9038
Anthony Toney, Toney.Anthony@epa.gov
- Supervisory Environmental Scientist, R04-ECAD-CAB, 404-562-9085

Robert Bookman, Bookman.Robert@epa.gov, 404-562-9169
Verne George, George.Verne@epa.gov, 404-562-8988
Gopal Timsina, Timsina.Gopal@epa.gov, 404-562-9017
Marlene Tucker, Tucker.Marlene@epa.gov, 404-562-9536, Attorney-Advisor
Robert W. Caplan, Caplan.Robert@epa.gov, 404-562-9520, Attorney-Advisor

OIG:

Sarah Davidson, Davidson.Sarah@epa.gov, Program Analyst, 202-566-2529
Natasha Henry, Henry.Natasha@epa.gov, Health Scientist, 212-637-3193
Barry Parker, Parker.Barry@epa.gov, Program Analyst, 202-566-2913
Chad Kincheloe, Kincheloe.Chad@epa.gov, Project Manager, 312-886-6530

Scope: EPA 2009 TSCA Consent Order with Dupont (currently Chemours) concerning the GenX production at the Fayetteville Works in Fayetteville, North Carolina (NC).

Conclusion(s):
1. No inspections or compliance monitoring activities had been done by Region 4 at the Dupont (currently Chemours) Fayetteville Works in Fayetteville, NC after the 2009 consent order was finalized until the compliance monitoring inspection was conducted under the Core TSCA inspection program in 2018. This inspection led to the Chemours Notice of Violation issued in 2019. This Chemours Notice of Violation also included violations cited at another Chemours facility, Washington Works in West Virginia. [Details #14]

2. Region 4 personnel first learned of the GenX and other contamination in the Cape Fear River from 2017 media reports and from EPA headquarters. This is what triggered the 2018 Core TSCA inspection at the Fayetteville Works in Fayetteville, NC. [Details #15]

3. Generally, Region 4 personnel will not know about a TSCA 5(e) consent order until it has been finalized at headquarters and sent to the region. [Details #13, last sent.]

4. Region 4 personnel shared that the region does not receive all the consent orders from headquarters that involve facilities in their region. So, their region 4 database for tracking consent orders will only be as accurate as the consent orders they have been provided from headquarters. This lack of knowledge is of concern to the region. [Details #22, email par. 1]

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Details:

A. *Introductions and OIG project overview*
(**1**) Sarah Davidson, OIG, began the meeting with introductions of OIG and Region 4 personnel on the teleconference call.
(**2**) Sarah read the notification memo's objective focused on EPA 2009 TSCA 5(e) Consent Order regarding the Dupont (currently Chemours) Fayetteville Works in Fayetteville, North Carolina (NC).
(**3**) Sarah provided an overview of the offices we have communicated with at HQ. Specifically, OECA and OCSPP (OPPT).
(**4**) Sarah informed Region 4 personnel that this review was being conducted under the CIGIE Blue Book process and is expected to be completed expeditiously by having fieldwork last 30 – 60 days, no issuance of a discussion document, and less time [15 days] for the agency to respond to a draft report. Sarah informed Region 4 personnel that we estimate a final report would be issued in 6 – 7 months if we do not encounter delays.
(**5**) Sarah asked if anyone had any questions. There were none. Sarah proceeded by asking prepared interview questions.

[*ANALYST NOTE SEE Details section below #G for the prepared OIG interview questions that guided this meeting. Generally, most questions were covered at this meeting. The details of the questions and information provided by Region 4 personnel are not captured chronologically. Information provided at this meeting was captured and grouped by topic area.*]

B. *Region 4 TSCA 5(e) Consent Orders General Information*

(**6**) [redacted] Region 4, provided that the region receives TSCA 5(e) consent orders from OSCPP headquarters and this is generally the first time when Region 4 personnel first become aware of a TSCA 5(e) consent order.

(**7**) Region 4 personnel have only been tracking how many TSCA consent orders they have in their region since 2017. A database for this tracking was mentioned but not specifically identified. Prior to 2017, the number of consent orders were not tracked. Region 4 personnel could not provide how many TSCA 5(e) consent orders were currently applicable to their region. Region 4 personnel informed the OIG that they would get back to us on the number of TSCA 5(e) consent orders applicable to Region 4.

(**8**) Region 4 personnel review TSCA 5(e) consent orders to see how they may fit, and potentially be included, in the region's compliance/inspection targeting strategy for inspections. A TSCA 5(e) consent order may also be included in the region's targeting strategy if requested to be included by OSCPP headquarters.

C. *Region 4 Core TSCA Compliance/Inspections*

[ANALYST NOTE: "TSCA New and Existing Chemicals (TSCA NEC), also known as Core TSCA."
source: https://www.epa.gov/compliance/good-laboratory-practices-standards-compliance-monitoring-program]

(**9**) Region 4 personnel described their Core TSCA compliance/inspection targeting strategy as inclusive of all TSCA sections 4, 5, 6, 8, 12, and 13 as provided in the compliance monitoring strategy (CMS). Region 4, and EPA, does not have a specific compliance/inspection targeting strategy for just TSCA 5(e) consent orders. TSCA 5(e) consent orders are included under the Core TSCA.

(**10**) Region 4 personnel described their targeting inspection strategy as a "neutral scheme strategy" and told the OIG that a variety of factors are considered for which facilities are selected for inspections. Tips and complaints received were identified by Region 4 personnel as factors for selecting which facilities to inspect. Some other general factors identified by Region 4 personnel for selecting facilities for inspections were identified as follows.

- size of facility,
- chemical production and sales,
- Chemical Data Reporting (CDR),
- last inspection date,
- types of chemical produced or imported,
- significant new use of chemicals,
- chemical testing requirements.

(**11**) When a TSCA 5(e) consent order is selected for a Region 4 Core TSCA inspection, the consent order is reviewed for its requirements and to serve as a checklist, or guide for planning and conducting the inspection.

(**12**) Region 4 personnel informed the OIG that they had recently undergone a reorganization on April 28, 2019. Since this reorganization, and currently, Region 4 has 2 Core TSCA inspectors. Prior to the April 28, 2019 reorganization, Region 4 had 4 inspectors. The typical number of Core TSCA inspections performed in the years leading up to the reorganization averaged 12

inspections per year performed by the 4 inspectors. The number of Core TSCA inspection post reorganization is expected to continue to average 12 per year with its current 2 inspectors.

D. *Inspection: Dupont (currently Chemours) Fayetteville Works in Fayetteville, North Carolina*

Link: Index Link:
(**13**) Region 4 personnel are not consulted in the development of TSCA 5(e) consent orders, and were not consulted for the 2009 TSCA Consent Order regarding the Dupont (currently Chemours) Fayetteville Works in Fayetteville, North Carolina. Region 4 personnel became aware of the finalized consent order when EPA headquarters (OCSPP) provided it to Region 4 personnel, in 2017. Generally, Region 4 personnel will not know about a TSCA 5(e) consent order until it has been finalized at headquarters and sent to the region.

(**14**) No inspections have been done at the Dupont (currently Chemours) Fayetteville Works in Fayetteville, NC since 2009 until the Core TSCA inspection in 2018 that led to the Chemours Notice of Violation issued in 2019. This Chemours Notice of Violation also included violations cited at another Chemours facility, Washington Works in West Virginia.
(**15**) Region 4 personnel first learned of the GenX and other contamination in the Cape Fear River from 2017 media reports and from EPA headquarters. This is what triggered the Core TSCA inspection at the Fayetteville Works in Fayetteville, NC.

(**16**) EPA headquarters coordinated the Fayetteville Works Core TSCA inspection after news media was reporting on the contamination found in the Cape Fear River. EPA headquarters determined the need for the inspection of the Fayetteville Works facility and arranged for an ERG contract inspector(s) to participate with Region 4 on the inspection. ERG contract inspector(s) concentrated on onsite inspection involving air and water releases from the production of GenX at the Fayetteville Works facility. The ERG contractor did the calculations to determine compliance with the consent order's requirement for the facility to capture 99% of the chemicals being produced and production waste during GenX manufacture at the Fayetteville NC facility. The ERG contractor determined that the Fayetteville Works facility was in compliance by determining that less than 1% of the chemicals and waste emitted in the air and water releases were compliant with the 2009 consent order's requirements. EPA Region 4 personnel stated that they are in agreement that that the Fayetteville Works facility was in compliance by determining that less than 1% of the chemicals and waste emitted in the air and water releases were compliant with the 2009 consent order's requirements.
Link:
(**17**) Region 4's described their involvement in the Fayetteville facility inspection as follows.

a. Link: Index requested consent order from OSCPP headquarters
b. reviewed terms and conditions of consent order
c. reviewed notice of commencement for manufacture of the PMN chemical per consent order
d. reviewed tests and studies submitted to EPA per consent order
e. reviewed CDR report from 2016
f. reviewed PMN database
g. reviewed chemicals being manufactured at the facility for applicability of a SNUR notification

h. issued letter to facility announcing scheduled inspection
i. requested applicable documentation to be ready before inspection visit
j. identified personnel to be present for inspection visit
k. reviewed other records prior to facility inspection visit
l. participated in facility inspection regarding information described above.
m. Per consent order, inspected worker personal protection equipment (PPE) requirements and PPE use, including the use of required worker respirator equipment.
n. Region 4 personnel compared production records for restrictions on chemical production volume allowed until required studies had been completed for compliance with consent order terms and conditions for production levels. The consent order required specific studies had to be completed before the facility could increase production levels. A comparison of production volume dates and studies' completion dates were reviewed.

(**18**) Ultimately, Region 4 and ERG personnel determined that GenX contamination was occuring as a result of it being released as a byproduct of another manufacturing process at the Fayetteville Works location. This byproduct release from another process was not covered by the TSCA 5(e) consent order that only addressed the manufacture of GenX as a new chemical product for commerce. Region 4 personnel mentioned that this byproduct may be addressed under TSCA 8(e). Region 4 personnel also informed the OIG that the releases of GenX as a byproduct in the air and water were now being addressed by the state of North Carolina in the permitting processes under the Clean Water Act (CWA) and Clean Air Act (CAA).

(**19**) Region 4 personnel informed us that EPA headquarters has the lead on enforcement regarding the Dupont (Chemours) production of GenX.
(**20**) Regarding the production limits included in the 2009 TSCA consent order for the production/import of GenX, Chad Kincheloe, OIG, asked how Region 4 is able to track the production levels of the GenX chemical nationwide as specified in the consent order. Region 4 personnel responded that the Fayetteville plant is the main facility that produced GenX.

E. *Wrap-up*
(**21**) Chad Kincheloe, OIG, asked if Larry Lamberth will continue to be our Region 4 point of contact for this review. Larry confirmed that is correct.

- **MEETING ENDED** -

F. *Post Meeting Conversation with Meeting Participant*
(**22**) Conversation Summary:
From: Davidson, Sarah <davidson.sarah@epa.gov>
Sent: Monday, November 4, 2019 11:25 AM
To: Kincheloe, Chad <Kincheloe.Chad@epa.gov>; Parker, Barry <Parker.Barry@epa.gov>; Henry, Natasha <Henry.Natasha@epa.gov>
Subject: call with (b) (6)

Hi Team –

(b) (6) shared that the region does not receive all the consent orders that involve facilities in their region, so the number that they will eventually give us may not be right – it will just be the number they know about. (b) (6), (b) (5) I asked more about how they are now tracking the consent orders, and (b) (6) confirmed that recently they have started tracking the consent orders in the database.

(b) (6), (b) (5) .

Sarah

Sarah Davidson
Program Analyst | EPA Office of Inspector General
Office of Audit & Evaluation
(202)566-2529

G. – *Prepared OIG Interview/Meeting Questions*:

1. Please provide a general overview on how the region monitors compliance with TSCA 5e consent orders. What policies and procedures do you use?

2. Approximately how many TSCA 5e consent orders does Region 4 have compliance monitoring responsibilities for?

3. How many TSCA core inspectors are there in R4, and how many core TSCA inspections do they do each year?

4. How does Region 4 target inspections for TSCA 5e consent orders?

5. Do you ever coordinate with OCSPP on development of consent orders?

6. Was there any compliance monitoring of the Chemours Fayetteville facility before the inspection that lead to the NOV?

7. What initiated the inspection of the Fayetteville facility? What role did HQ play in determining a compliance inspection was needed at Chemours North Carolina site?

8. What work is done prior to the on-site inspection?

9. The next set of questions is looking at what you do to check for compliance with the consent order when you go in for an inspection and in particular what you did in this case.

a. How do you ensure compliance with testing requirements?

b. How do you ensure compliance with requirements that deal with the production level and limits for the PMN substances?

c. How do you ensure compliance with the workplace protections components of the 2009 TSCA 5e consent order?

d. How do you ensure compliance with the requirement to recover and capture or recycle wastewater and air emissions at an overall efficiency of 99%?

i. Is this a common requirement?

ii.. The consent order preamble says for all production in US, so how does R4 consider this when determining compliance with terms for production and 99 % capture?

e. How do you ensure compliance with exemptions?

- **END** -

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